

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984) MB Docket No. 05-
311
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

COMMENTS OF THE VILLAGE OF ELK GROVE VILLAGE, ILLINOIS

These Comments are filed by The Village of Elk Grove Village, Illinois in support of the comments filed by the Alliance for Community Media (“Alliance”), the Alliance for Communications Democracy, the National Association of Telecommunications Officers and Advisors (“NATOA”), and other national local government organizations. Like the Alliance, The Village of Elk Grove Village, Illinois believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the benefits of cable franchising and the Public, Educational, and Government Access (“PEG”) services in our community.

Cable Franchising in Our Community

Community Information

Elk Grove Village is a city with a population of approximately 35,000. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since 1981.

Our Current Franchise

Our current franchise began in 1997 and expires in 2007.

Our franchise requires the cable operator to pay a franchise fee to the Village of Elk Grove Village in the amount of 5% of the cable operator's gross revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

Our franchise requires the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to public access; 1 channel devoted to educational access; and 1 channel devoted to government access.

Our franchise requires that Comcast provide channels for public, educational and government access television. Comcast manages and provides facilities for public access that covers 14 communities in the northwest suburbs of Chicago. Educational access is funded and run by Harper College and shared by Township High School District 214.

The Village's local government access is funded solely by franchise fees provided by Comcast. The Village invests approximately \$250,000 per year in franchise fees to provide programming on the government access channel.

Our franchise allows for capital support for PEG Access and other public interest services. The cable operator provided a one-time capital grant of approximately \$80,000 for government access camera equipment.

Our franchise agreement requires an institutional network ("I-Net"). The I-Net is currently utilized to transmit governmental access channel signals to the head-end for distribution to subscribers and the I-Net is utilized to cover live activities in the community (parade, council meetings, press conferences, etc).

Our franchise also requires the cable company to transmit emergency alerts. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. The emergency alert is very important during tornado warnings (actual sighting of a tornado in the area), and also during the need to issue drinking water "boil orders" or evacuations as another example.

PEG Access Services

The Village of Elk Grove Village has provided access services in our community for 20 years. The number of access channels we operate is 1. In our most recently completed fiscal year, The Village of Elk Grove Village provided 123 hours of new original local programming to the cable subscribers. Below are the highlights of our services to the community:

- Video bulletin board with text and graphics for community announcements.
- Coverage of community planning forums, town hall meetings, and neighborhood board meetings.

- Community-produced television programming for special interests (such as - seniors, non-English-speaking, ethnic and cultural groups, youth, people with disabilities, advocacy groups, health care, etc.)
- Staff-produced television programming on topics of interest to the local community.
- Local news coverage (not on local broadcast stations).
- Video production facilities including studio, field, editing, and, if available, remote van.
- Support to Media Training Centers in local schools, enhancing learning opportunities for students.
- Technical design, installation, and maintenance support.
- Local political coverage, candidate platform statements and candidate debates during campaign season.
- Gavel-to-gavel coverage of educational governance proceedings.
- Distribution of community college and university educational programming.
- Gavel-to-gavel coverage of state legislative sessions, hearings, and other select proceedings.
- Gavel-to-gavel coverage of local government meetings/hearings and other select "local" governmental proceedings.
- Election night coverage.
- Other

The Franchising Process

The cable system(s) serving our community also serves many adjoining communities: Mount Prospect, Des Plaines, Schaumburg, Hoffman Estates, Arlington Heights, Rolling Meadows, Bartlett, Bensenville, Glenview, Wheeling, Buffalo Grove, etc.. In 1979, our community worked together with approximately 35 other communities to issue the original cable franchise. The existing franchise with Comcast was a joint effort 5 municipalities for negotiation purposes and 100 municipalities for franchise transfer from AT&T to Comcast. This allowed the

company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

While a franchise is negotiated by the local government as a contract, the process provides notice requirements for the public and the cable operator under state and local law. For instance, the cable operator provides notification of rate increases, channel line-up changes, outage information, and customer service information including how quickly calls are answered, the number of dropped calls, and similar information.

Competitive Cable Systems

Our community has actively sought competitive cable providers. Prior to issuing the current cable franchise, the Village issued an RFP. One competitor expressed interest in overbuilding the community following the provisions in the RFP; however, the competitor withdrew from the process after choosing to wait and determine if their cable overbuild investment would provide a sufficient return.

The competitive firm was known as Ameritech at the time (and since sold its franchises to a firm called Wide Open West). The Village, in conjunction with 4 neighboring communities, invested significant times in meetings, plan reviews, and discussions prior to issuing the RFP. We were extremely disappointed in the decision of the firm to not respond to the RFP.

In addition, the community was approached by 2 other potential competitive cable overbuilders (RCN and 21st Century Cable). This occurred around the year 2000. However, both firms cited financing issues as barriers to being able to overbuild a competitive system in our community.

The Construction Process

In addition to the aforementioned, the franchise agreement provides for construction and restoration of construction in the public rights-of-way as well as private easement areas. This is an extremely important issue to local government.

We at the local level must know who is constructing in our community. Our residential community has completely underground utilities. It is imperative that we know what company is digging-up sidewalks, streets, curbs, gutter, and parkways in order to install their product because we must ensure that the work is done safely and that no safety problems persist once the work is completed.

Moreover, we work with the excavators to ensure that other utilities are not disrupted by the excavation. Imagine the unpleasant surprise of having water mains ripped up, sewer mains destroyed, natural gas geysers springing from excavations, as well as electric lines, phone lines, and cable service terminated. We at the local level know our community the best, and we work to ensure the aforementioned surprises do not occur.

Conclusions

This NPRM is only looking retrospectively at one aspect of the franchising process. We believe that the Commission must look to the future of the public's interest in telecommunication's services. The existing franchising process has provided a basis for public interest services appropriately tailored to each community's local needs. We believe that those services such as PEG should be required of all broadband telecommunications providers.

The local cable franchising process has functioned well in Elk Grove Village. As the above information indicates, we are experienced at working with cable providers, the local franchise authority, and community interests to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises can also ensure that the cable operator provides the PEG Access services which are responsive to the local community needs as determined through community needs assessments and the local knowledge of educators, local elected officials and local nonprofit organizations.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of primarily local interest.

Local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Village of Elk Grove Village therefore respectfully requests that the Commission take this opportunity to reaffirm the primacy of local government authority over franchising and should make clear that imposition on a new entrant of PEG Access, consumer protections and other public interest services requirements that are equivalent to those of the incumbent does not constitute an unreasonable refusal to award an additional competitive franchise within the meaning of federal law.

The PEG Access model should be strengthened and applied to new technologies, assuring that localism and community participation are not displaced by commercial interests.

The nation would be well served by a policy of “Community Reinvestment” through PEG Access that includes funds and bandwidth and/or spectrum that will be used for public purposes by:

1. Allowing the local community which owns the public rights-of-way to franchise and determine the best use of the community’s property. This is imperative;
2. Dedicating ten percent of the public airwaves and capacity on communication facilities that occupy public rights-of-way to PEG use for free speech, diverse points of view, local programs, community based education and political speech;
3. Mandating funding of five percent of gross revenues above and beyond any franchise fee to local authorities from all infrastructure and service providers and spectrum licensees to support PEG equipment, facilities, training and services; and,
4. Making PEG Access universally available to any consumer of advanced telecommunications services capable of full-motion video.

Respectfully submitted,

Village of Elk Grove Village, Illinois

By: Ross Rowe, Cable Production

Coordinator

cc: Alliance for Community Media, Getup@alliancecm.org